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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,356	08/15/2003	Johnny R. McCoy	McCoy Volleyball	1621

7590

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EXAMINER

ARYANPOUR, MITRA

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/642,356	<b>Applicant(s)</b> MCCOY, JOHHNY R.	
	<b>Examiner</b> Mitra Aryanpour	<b>Art Unit</b> 3711	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the covers 26 and 28 (see claims 9 and 10); stabilization means 70 (see claim 13); a plurality of suction devices (see claim 15); repositionable horizontal support member (see claim 3); slideably adjustable vertical support members (see claim 4); and lock pin (see claim 16) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character(s) "18 and 20" has been used to designate both support mechanisms and stabilization mechanism; and

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numeral 10 designating the present invention.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The above objections to the drawings will not be held in abeyance.

### *Specification*

3. The disclosure is objected to because of the following informalities: Each paragraph should begin with a capital letter and end with a period (see pages 6 and 7 of the specification, under the heading Summary Of The Invention). Additionally, the "Brief Description of the Drawings" does not appear to correspond with the drawings as filed. Figure 1 shows a perspective view of the device. However, figure 2 is not a side view of the device, it appears to be more like a top view or perhaps even a sectional view, in any event it is also labeled incorrectly, since what is labeled 14, 16 should actually be 50, 52. Figure 3 is also not a front

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view but rather a side view of the device. Appropriate correction is required for the above objections.

### ***Claim Objections***

4. Claims 3, 4, 13-16 are objected to because of the following informalities: In claim 3, line 3 --said-- should be inserted before "horizontal support member". In claim, each claim should begin with a capital letter and end with a period. Periods may not be used elsewhere in the claims except for abbreviations. See *Fressola v. Manbeck*, 36 USPQ2d 1211 (D.D.C. 1995). Where a claim sets for a plurality of elements or steps, each element or step of the claim should be separated by a line indentation, 37 CFR 1.75(i). Additionally, claims 2-4 are objected to because of the following informalities: In claims 3 and 4, applicant is referring to "said vertical support members", meaning more than one vertical member. However, claim 2 requires at least one vertical support member, meaning only one vertical support member is required. There is no support for a plurality of vertical members. Appropriate correction is required for the above objections.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 4, 6, 8, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Stewart (5,924,930).

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Regarding claim 1, Stewart discloses: a support means (combination of support device 52 and vertical support post 24) supporting at least one stabilization mechanism (the broadest reasonable interpretation of stabilization mechanism would include locking plate 72); at least one ball (90); a suspension means (combination of socket 94 and rod 92; see column 4, lines 8-15) suspending said ball (90) from said support means (combination of support device 52 and vertical support post 24) at a height above a playing surface (see figure 1), a portable base member (base 22). It should be noted that the preamble, [a device for improved volleyball practice], does not limit the structure of the claimed device because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

Regarding claim 3, Stewart shows said horizontal support member (horizontal support device 52) may be re-positioned along said vertical support member (vertical support post 24) so that the height of said horizontal support member relative to said playing surface may be adjusted.

Regarding claim 4, Stewart shows said vertical member (vertical support post 24) may be slidably adjusted (collar 48) along said horizontal support member so that the lateral distance between said vertical support members may be adjusted (see figure 1).

Regarding claim 6, Stewart shows said stabilization mechanism (locking plate 72) may be reversibly attached (the broadest reasonable interpretation of reversibly attached would include turning backward the position of the collar 48 with respect to the vertical post 24) to and slidably adjusted along said support means (it slidably adjusted with respect to the vertical support post 24).

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Regarding claim 8, Stewart shows said stabilization mechanism (locking plate 72) is comprised of a circular frame (locking plate is semi-circular in shape) extending in a uniform planar direction substantially parallel to said playing surface (see figures 1, 4 and 8; the locking plate 72 is parallel with the horizontal support device 52, which in turn is parallel to the ground).

Regarding claim 11, Stewart shows said suspension means (combination of socket 94 and rod 92) is comprised of a connection means (ball and socket arrangement not identified with a reference numeral; see column 3, lines 9-16).

Regarding claim 12, Stewart shows said suspension means (combination of socket 94 and rod 92) is further comprised of a connecting means tube (socket 94), which is attached to said support means (support device 52).

7. Claims 1-4, 6, 8, 11-13, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Haskett (3,006,647).

Regarding claim 1, Haskett discloses a support means (combination of horizontal support rod 30 and post 13) supporting at least one stabilization mechanism (the broadest reasonable interpretation of stabilization mechanism would include suction cup 40 or alternatively fitting 32); at least one ball (41); a suspension means (chain 35) suspending said ball (41) from said support means (combination of support rod 30 and post 13) at a height above a playing surface (see figure 1), a portable base member (three tripod legs 10). It should be noted that the preamble, [a device for improved volleyball practice], does not limit the structure of the claimed device because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

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Regarding claim 2, Haskett shows said support means is comprised of: one horizontal support member (horizontal support rod 30) and at least one vertical support member (post 15) permanently joined so as to form a singular, modular support frame (see figure 1).

Regarding claim 3, Haskett shows said horizontal support member (horizontal support rod 30) may be re-positioned along said vertical support member (the post is telescopic) so that the height of said horizontal support member relative to said playing surface may be adjusted.

Regarding claim 6, Haskett shows said stabilization mechanism (T-fitting 32) may be reversibly attached to and slidably adjusted along said support means (horizontal support rod 30).

Regarding claim 8, Haskett shows said stabilization mechanism (T-fitting 32) is comprised of a circular frame extending in a uniform planar direction substantially parallel to said playing surface (best seen in figure 1).

Regarding claim 11, Haskett shows said suspension means (chain 35) is comprised of a connection means (ring plug 34).

Regarding claim 12, Haskett shows said suspension means (chain 35) is further comprised of a connecting means tube (the vertical portion of T-fitting 32), which is attached to said support means (horizontal supporting rod 30).

Regarding claim 13, Haskett shows said portable base member (three tripod legs 10) is comprised of a device stabilization means (vacuum cup 12) .

Regarding claim 15, Haskett shows said device stabilization means consists of a plurality of suction devices (vacuum cup 12) placed along the bottom of said base member (see figure 1).



***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 5, 7, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (5,924,930).

Regarding claim 2, Stewart shows said support means is comprised of: one horizontal support member (horizontal support device 52) and at least one vertical support member (vertical support post 24) permanently joined so as to form a singular, modular support frame. Stewart shows the support member to be formed in one-piece. To the extent if one argues that the support member of Stewart is not formed of one-piece, it would have been obvious to one having ordinary skill in the art to integrally form the support member of Stewart, since it has been held that forming a one-piece article which had formerly been formed in two-pieces and put together would have been a matter of obvious engineering choice. *In re Larson*, 144 USPQ 347 (CCPQ 1965); *In re Lockart*, 90 USPQ 214 (CCPA 1951).

Regarding claim 5, Stewart shows said stabilization mechanism (locking plate 72) is permanently joined to said support means so as to form a singular, modular frame. To the extent if one argues that the stabilization mechanism of Stewart is not formed of one-piece, it would have been obvious to one having ordinary skill in the art to integrally form the stabilization mechanism of Stewart, since it has been held that forming a one-piece article which had formerly

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been formed in two-pieces and put together would have been a matter of obvious engineering choice. In re Larson, 144 USPQ 347 (CCPQ 1965); In re Lockart, 90 USPQ 214 (CCPA 1951).

Regarding claim 7, Stewart shows said stabilization mechanism (locking plate 72) is comprised of a circular frame (locking plate is semi-circular in shape) extending in a uniform planar direction substantially parallel to said playing surface (see figures 1, 4 and 8; the locking plate 72 is parallel with the horizontal support device 52, which in turn is parallel to the ground).

Regarding claims 9 and 10, Stewart does not disclose expressly the use of a cover for surrounding the frame. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use a cover, because Applicant has not disclosed that using a cover, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the frame taught by Stewart or the claimed covered frame because both frames perform the same function of supporting the practice device. Therefore, it would have been an obvious matter of design choice to modify Stewart to obtain the invention as specified in claims 9 and 10.

10. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (5,924,930) in view of Harrod (GB 2,201,350A).

Regarding claims 13 and 14, Stewart shows a portable base member (22), but does not expressly disclose the specific type of stabilization means used in order to stabilize the practice device. However, it should be noted that it is customary to provide a weighted base for a training/practice device in order to insure that the device is stably positioned on the support

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surface. Nevertheless for the sake of argument Harrod shows a game support post (14), wherein the base (16) is provided with a plurality of weights (21) placed along a vertical support pin (19) resting on top of said base member (16). See page 3, lines 14-17. In view of Harrod it would have been obvious to provide a plurality of stackable weights on the base of Stewart, the motivation being, so that the balance and stability of the overall device can be more readily adjusted, in order to meet the strength and ability of the end user.

11. Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart (5,924,930) in view of Staka (5,238,251).

Regarding claims 13 and 16, Stewart shows a portable base member (22), but does not expressly disclose the specific type of stabilization means used to stabilize the practice device. However, it should be noted that it is desirable to provide a base for a training/practice device that is readily transportable to various locations. Staka shows a volleyball training apparatus (10) having a base 12, wheels (140 rotatably mounted to base (12), a pivoting locking wheel mechanism (16), operably coupled thereto, and an upright flanged member (18) secured to base (12) by bolts for detachably securing an upright support member (22) therein. In view of Staka it would have been obvious to provide a wheel and lock pin for the base of Stewart, the motivation being, so that the base is readily transportable to various locations.

### ***Conclusion***

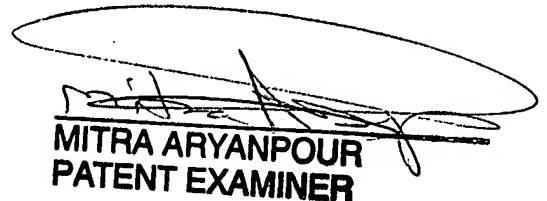
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
16 September 2004



MITRA ARYANPOUR  
PATENT EXAMINER